

**Authority:** 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Pennsylvania to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

Pennsylvania

(a) \* \* \*

(b) The Pennsylvania Department of Environmental Protection submitted a request on behalf of the Allegheny County Health Department pertaining to operating permit programs in the Commonwealth of Pennsylvania. The submission, dated November 9, 1998 and amended March 1, 2001, includes a request for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County. The Allegheny County Health Department's partial operating permit program is hereby granted full approval effective on December 17, 2001.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-7097-1]

**Hawaii: Final Authorization of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final determination on application of Hawaii for final authorization.

**SUMMARY:** Hawaii has applied for final authorization of its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Hawaii's application and has reached a final determination that Hawaii's hazardous waste management program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

**EFFECTIVE DATE:** Final authorization for Hawaii shall be effective at 1 p.m. on November 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Smith, WST-2, U.S. EPA

Region 9, 75 Hawthorne Street, San Francisco 94105-3901, (415) 744-2152.

**SUPPLEMENTARY INFORMATION:**

**A. Why are State Programs Authorized?**

Section 3006 of RCRA allows EPA to authorize State hazardous waste management programs to operate in the State in lieu of the Federal hazardous waste management program subject to the authority retained by EPA in accordance with RCRA, including HSWA. EPA grants authorization if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final State authorization appear at 40 CFR part 271.

**B. When Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**C. What Were the Comments and Responses to EPA's Proposal?**

On May 5, 1999, Hawaii submitted an official application for final authorization to administer the RCRA program. On June 22, 2000, EPA published a tentative determination announcing its intent to grant Hawaii final authorization. Further background on the tentative decision to grant authorization appears at 65 FR 38802-38806, June 22, 2000.

Along with the tentative determination, EPA announced the availability of the application for public comment and the dates of a public meeting and a public hearing. The public meeting was held on July 25, 2000 and the public hearing was held on July 27, 2000.

The EPA received three oral comments, one of which was supplemented in writing, and one letter containing written comment during the public comment period. Additionally,

in April 2001, after the close of the comment period, EPA received a Petition To Withdraw Hawaii Certification and Title VI Complaint of Discriminatory Acts (Petition to Withdraw) document challenging the administration and enforcement of environmental programs by the State of Hawaii and seeking withdrawal of authorization for all environmental programs, including RCRA. We have taken into consideration comments in the Petition relating to the Hawaii hazardous waste management program in taking today's action. In addition, the EPA Office of Civil Rights (OCR), which is responsible for processing and investigating complaints of discrimination filed against programs or activities that receive financial assistance from EPA, has notified the complainant that it will review the Title VI Complaint of Discriminatory Acts under the procedural rules for handling Title VI Complaints. The significant issues raised by the commenters and EPA's responses are summarized below. Today's action is not a final determination on the merits of the Petition to Withdraw federal authorization for all environmental programs in Hawaii.

1. *Comment:* EPA received comments relating to the Hawaii Department of Health's (HDOH) implementation of other programs for which Hawaii had been delegated authority by EPA. The comments generally asserted that the HDOH could not adequately enforce the laws and regulations of the hazardous waste management program because its record of performance in other environmental programs is poor. Some specific examples cited were that Hawaii's enforcement of the Clean Water Act is poor, its implementation of the Total Maximum Daily Load program (TMDL) is poor, and, in general, it lacks adequate funds, staff and commitment for environmental programs, such as the solid waste program. The Petition to Withdraw also raised these concerns. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

*Response:* Each environmental program is unique and must be evaluated in light of the particular federal and state requirements applicable to that program. Among other things, programs differ significantly in the numbers and types of pollutants regulated; the number, size and type of facilities which are regulated; complexity and scope of regulatory requirements; regulatory mechanisms (for example, use of permits and prohibitions); tools for assessing compliance (e.g., inspections, self-

monitoring and self-reporting); and enforcement options. Moreover, different programs vary in funding levels and sources, and staffing levels (both number of staff and required qualifications).

With respect to HDOH's performance in implementing the hazardous waste management program, EPA will discuss four program areas: compliance and enforcement, permitting, corrective action and waste minimization. HDOH has demonstrated steady progress in developing a strong compliance program. HDOH has been developing its capability to enforce the hazardous waste regulations since 1988, eleven years prior to submitting its application for program authorization in 1999. Since 1994, when Hawaii first promulgated state hazardous waste regulations, the HDOH staff have conducted more than 170 inspections of generators or treatment facilities and have developed 30 enforcement actions as a result of those inspections. Included in HDOH's recent enforcement efforts was a complex joint enforcement action with EPA against the University of Hawaii. That enforcement action resulted in one of the largest RCRA settlements ever for hazardous waste violations in EPA Region 9, including \$1.7 million in penalties and environmental projects.

HDOH has inspected or visited another 530 sites, which were determined to be either conditionally exempt from regulation because they generated small amounts of hazardous waste, or not hazardous waste sites because the original facility no longer existed at that location. Information from these 530 smaller inspections and visits was used to update the HDOH database of facilities subject to RCRA hazardous waste management regulations. Twenty five of its 30 enforcement actions are complete, resulting in \$792,058 in penalties collected. HDOH has also negotiated, as part of two settlements, supplemental environmental projects worth about \$1.2 million. The EPA believes that this record demonstrates both a capacity and a commitment to enforce hazardous waste regulations.

Enforcement is only one aspect of a comprehensive hazardous waste management program. Other important components are permitting, which includes permitting currently operating treatment, storage and disposal facilities; corrective action, i.e., monitoring the cleanup of sites where past practices or accidents have resulted in hazardous waste spilling on the ground; and waste minimization, involving development of projects to promote future safe practices and waste

reduction efforts. EPA believes that the Hawaii hazardous waste management program is thorough and sound in its permitting, corrective action and waste reduction activities.

Under the second part of the program, permitting, there is only one non-emergency permitted hazardous waste facility operating in Hawaii. The U.S. Navy at Pearl Harbor operates a hazardous waste storage facility to store hazardous wastes generated by the Navy until the wastes can be shipped to the mainland for proper treatment and disposal. The Pearl Harbor facility renewed a five-year permit in July 2000. The HDOH permit writer took the lead for reviewing the Navy's application and for developing the subsequent permit, issued pursuant to both Hawaii and Federal laws and regulations. There are currently three emergency permits that have been issued in Hawaii. Emergency permits are temporary permits, with a duration of no more than 90 days, issued to address an imminent and substantial endangerment to human health or the environment.

The only other site which may lawfully store hazardous waste on Hawaii is under the administration of the EPA rather than HDOH. That site is another U.S. Navy site at Pearl Harbor, which is storing hazardous waste mixed with radioactive waste until it can be shipped to planned treatment and disposal facilities on the mainland. Pearl Harbor is currently storing this waste under a compliance order entered into with EPA. When all of the currently stored waste is transferred, the site will not store hazardous waste beyond the amount of time allowed any generator in Hawaii to accumulate hazardous waste for safe transportation. In accordance with EPA's independent inspection and enforcement authorities after program authorization, EPA will continue to administer this order unless there is an agreement at some future time for HDOH to assume these duties.

The HDOH is monitoring the cleanup of four sites in Hawaii. Those sites comprise Hawaii's corrective action universe. All four of these sites have achieved sufficient cleanup and control to safeguard human health and groundwater.

In the area of waste minimization, the HDOH is implementing several projects to provide information to businesses and the public that will assist them in improving Hawaii's environment by preventing wastes from ever being generated or reducing the amount of waste a business needs to generate in its industrial processes.

In all four of these program areas: compliance and enforcement,

permitting, corrective action, and waste minimization, Hawaii's record of performance shows it can adequately implement and enforce the laws and regulations of the hazardous waste management program.

With respect to the comments related to Hawaii's implementation and enforcement of the Clean Water Act, these are the same comments which were raised in the Petition. In response to the Petition, EPA decided to change its schedule of state program audits to perform an audit of Hawaii's NPDES program earlier than originally scheduled. Pursuant to the audit, EPA reviewed Hawaii's statutory authorities as well as enforcement mechanisms, and the audit raised some concerns, particularly related to enforcement. EPA is working with the State to address those concerns. We are also reviewing the issues raised in the Petition, and will respond directly to the Petitioner on those issues.

*2. Comment:* Several comments generally expressed concern that the State of Hawaii has sometimes violated its own regulations and cannot take enforcement action against itself.

*Response:* The HDOH does have the legal authority to bring an enforcement action against another state agency and, in fact, HDOH has taken enforcement action against another state agency. The EPA is satisfied that appropriate enforcement actions can and will be taken by HDOH against other non-complying State of Hawaii agencies when necessary. Over the last five years HDOH has targeted both local, state and federal governmental facilities, as well as private businesses, for hazardous waste compliance inspections. These inspections have resulted in 30 hazardous waste enforcement cases against public and private entities. Most recently, HDOH's largest hazardous waste enforcement case was against the University of Hawaii, a state-funded agency, that resulted in a \$1.7 million settlement. The settlement includes a cash penalty of \$505,000 and an agreement that the University will undertake several system-wide pollution prevention and waste minimization projects at a total value of \$1.2 million, and an extensive compliance audit of its facilities. The University of Hawaii action was a joint enforcement effort between HDOH and EPA.

*3. Comment:* A commenter expressed concern that HDOH has not developed appropriately protective regulations, commenting for example that the State does not have good water quality standards. Similar concerns were mentioned in the Petition to Withdraw.

Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

*Response:* As adopted in 1994, and amended in 1998, the Hawaii hazardous waste management rules are at least as stringent as the federal rules and in some cases are even more protective, as was outlined in the **Federal Register** document discussing EPA's tentative determination to authorize the Hawaii hazardous waste management program, 65 FR 38802 (June 22, 2000). Hawaii has adopted all applicable federal RCRA hazardous waste management rules through May 25, 1998, and will continue to adopt new federal rules which are more protective of the environment. In addition, federal rules promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA) are immediately enforceable by the U. S. EPA until Hawaii adopts and receives authorization for them.

HDOH is currently reviewing the water quality standards for Hawaii, as required by the Clean Water Act. The EPA is working closely with the State during this triennial review process to ensure a successful outcome. The HDOH is expected to complete its review by the end of 2002. However, the adequacy of water quality standards is not an element of the criteria for determining a state hazardous waste management program's eligibility for RCRA authorization.

4. *Comment:* One commenter said EPA has failed to adequately monitor the State of Hawaii programs and that program funds designated for a specific program have been given to other programs.

*Response:* The commenter did not give a specific example of a program or a federally-funded grant that was not adequately monitored or of misuse or misapplication of funds. Given that this Notice is addressing authorization of the hazardous waste management program, EPA will address the hazardous waste management program for which Hawaii is seeking authorization. Since 1988, EPA has annually evaluated HDOH's development and implementation of the hazardous waste management program. The hazardous waste management program has been supported by annual federal grants with appropriate matching state funds since 1988. As a part of these grants, EPA and HDOH negotiated annual work plans with EPA monitoring HDOH performance throughout the year. After the end of each annual grant EPA conducted a complete evaluation of the HDOH hazardous waste management program expenditures under the grant. EPA determined that HDOH accomplished

all of the work described in the annual grants, or, on the occasions when HDOH experienced a vacant position or for some other reason missed a work commitment, HDOH has returned an appropriate amount of hazardous waste federal funds to EPA. EPA is satisfied that HDOH implements an effective hazardous waste management program and that HDOH has completed the work supported by the federal hazardous waste grants. EPA will continue to conduct program evaluations and monitor HDOH performance and grant expenditures.

5. *Comment:* A commenter said that the two-year enforcement trend that EPA discussed at a public meeting on July 25, 2000 was insufficient to predict continuing success.

*Response:* Although EPA focused on the three most recent years of HDOH inspection and enforcement history at the public meeting, HDOH has been conducting inspections since 1994, when the State rules were first promulgated. In making its authorization determination, EPA has reviewed the full HDOH inspection history. Since 1994, HDOH has conducted more than 170 inspections of large generators and has annually monitored compliance at the only non-emergency permitted hazardous waste storage facility. These inspections have resulted in 30 enforcement actions since 1994, including a complex joint enforcement action with EPA against the University of Hawaii.

6. *Comment:* A commenter said that Hawaii's hazardous waste management program is not adequately funded and is staffed by temporary employees. Similar concerns were raised in the Petition to Withdraw. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

*Response:* Before making an authorization determination, EPA evaluates the State's program in light of the following characteristics: past performance, resources and skill mix, training program, and State commitment; and EPA's expectation of the program's continuing success. EPA has evaluated all aspects of Hawaii's hazardous waste management program and has determined that Hawaii's program is adequate and the level of the State's resources is sufficient.

Hawaii has issued quality permits and the quality of the State's corrective action activities is high. All four of Hawaii's corrective action sites have corrective actions in place that are protective of human health and groundwater. The State's inspections and subsequent reports have adequately documented violations resulting in the

successful assessment and collection of penalties. Hawaii has issued enforcement orders, settled cases and collected penalties in a timely manner; all of their enforcement cases initiated prior to the year 2000 are resolved. In addition, Hawaii has devoted sufficient State resources necessary to match the Federal hazardous waste management program grants. The State prepares and implements an annual training plan that ensures that all staff are adequately trained. Hawaii also has and effectively uses a data management system that provides timely and accurate information to the State and EPA. EPA believes that the State has demonstrated that it has the necessary resources, experience and organizational structure to successfully implement the provisions for which it is seeking authorization.

EPA believes that all of these actions and efforts are adequate to support HDOH's program, which has a universe of one storage facility, eight closing or closed facilities, four other sites undergoing cleanup, 55 large generators and 450 smaller generators of hazardous waste. All of the staff of the hazardous waste management program, the equivalent of 12 full time employees (FTE), occupy permanent positions.

7. *Comment:* A comment requested that HDOH develop, and get public involvement in, a policy to design and monitor supplemental environmental projects (SEP). The commenter said that they believed there was a SEP negotiated several years ago that awarded money to a non-profit agency without allowing other non-profit agencies to bid for the work. The commenter could not specify the office that developed the SEP or the violator involved.

*Response:* Hawaii is not required by RCRA statute or regulation to develop a supplemental environmental projects policy. Therefore EPA cannot condition RCRA authorization on whether HDOH has a SEP policy or the process to develop a SEP policy. Nevertheless, HDOH has chosen to adopt the EPA SEP policy, which obtains penalties for violations, but allows a portion of the penalty to be replaced by environmental work that is directly related to the violation. The February 2001 settlement of the enforcement action against the University of Hawaii contains the first SEP developed by the HDOH hazardous waste management program. EPA is satisfied with HDOH's application of its penalty and SEP policies in the University of Hawaii case. EPA believes that the HDOH policy concerning hazardous waste penalties is consistent with the federal policy and provides

adequate enforcement of compliance with the hazardous waste rules for purposes of authorization.

8. *Comment:* A comment proposed that, instead of giving the HDOH hazardous waste management program authorization, EPA give HDOH funding and training.

*Response:* As is the case with other States, EPA will continue to support HDOH's hazardous waste management program with available funding, training opportunities and coordinated activities after program authorization. EPA has supported the program since 1988 with federal grant funds. The EPA has provided training to HDOH in several areas, including inspections and enforcement, health and safety, penalty and economic benefit calculations, information management and waste minimization. The EPA also conducts program evaluations and provides feedback to the HDOH. The EPA will continue to do all of these things even after the program is approved.

9. *Comment:* A comment asked that the HDOH hazardous waste management program not be authorized until HDOH has developed criminal penalties.

*Response:* RCRA requires that authorized States have the authority to assess criminal penalties of at least \$10,000 per day for each violation and imprisonment for at least six months. The criminal remedies must address the transport, permitting and used oil violations described at 40 CFR 271.16(a)(3)(ii). Under Hawaii Revised Statutes (HRS) Chapter 342J-9(c), Hawaii may assess criminal penalties up to \$25,000 for each day of each violation or imprisonment for up to one year, or both; each of these provisions is more stringent than required for authorization. Additionally, the types of violations identified at HRS 342J-9(c) are consistent with the violations listed at 40 CFR 271.16(a)(3)(ii). Furthermore, HRS Chapters, 342J-7(a), 342J-8, and 342J-11 give Hawaii the authority to obtain injunctions against any person for any unauthorized activity which is endangering or causing damage to public health or the environment. Thus, Hawaii is authorized to assess criminal penalties, and such authority is consistent with the federal RCRA authorization requirements and therefore adequate for program authorization.

10. *Comment:* The Petition to Withdraw raised issues with Hawaii's investigative and enforcement efforts in connection with a March 2001 mercury release. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

*Response:* EPA is working with Hawaii on the cleanup and enforcement activities surrounding the mercury release. The HDOH office responsible for hazardous waste cleanup and enforcement in Hawaii is the Hazard Evaluation and Emergency Response (HEER) Office. The HEER Office does not administer the hazardous waste management program that is the subject of this authorization decision. The HEER Office had the lead in managing the cleanup activities. However, the EPA Emergency Response Team, the United States Navy and Air Force, and other local agencies participated in the cleanup. Cleanup of the mercury release and disposal of the waste was completed on or around July 30, 2001. Currently, the HEER Office is investigating the circumstances of the release to identify the responsible parties and recover response costs. The status of a state's hazardous waste cleanup activities however is not part of the criteria for determining a state hazardous waste management program's eligibility for RCRA authorization.

#### **D. What Decisions Have We Made in This Rule?**

EPA has made the final determination that Hawaii's application meets all of the statutory and regulatory requirements established by RCRA as of May 25, 1998. Therefore, we are granting Hawaii final authorization to operate its hazardous waste management program described in the authorization application, subject to the authority retained by EPA under RCRA. Hawaii will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its program application, subject to the limitations of RCRA, including HSWA. New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before such states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Hawaii, including issuing permits, until the State is granted authorization to do so.

#### **E. What Is the Effect of Today's Action?**

The effect of today's action is that persons in Hawaii that are subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons must comply with any applicable Federally-issued requirements, such as, for

example, HSWA regulations issued by EPA for which the State has not yet received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Hawaii continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable Federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own action.

This action does not impose additional requirements on the regulated community because the regulations for which Hawaii is authorized are already effective under State law and are not changed by the act of authorization.

EPA cannot delegate the Federal requirements for international export and transfrontier shipments of hazardous wastes at 40 CFR part 262, subparts E and H. Although Hawaii has adopted these requirements verbatim from the Federal regulations in Title 11 of the Hawaii Administrative Rules, sections 11-260, 11-261, and 11-262, EPA will continue to implement those requirements. Hawaii is not authorized for the requirements for international export and transfrontier shipments of hazardous wastes at 40 CFR part 262, subparts E and H.

#### **F. What Rules Are We Authorizing With Today's Action?**

On May 5, 1999, Hawaii submitted a final complete program application, seeking authorization in accordance with 40 CFR 271.3. In developing its hazardous waste management program, Hawaii adopted almost verbatim the federal hazardous waste regulations found in 40 CFR parts 260-266, 268, 270, 273 and 279, effective through May 25, 1998. We are granting Hawaii final authorization for the hazardous waste management program submitted. State hazardous waste management requirements that are either equivalent to or more stringent than the corresponding federal requirements will become part of the authorized State program and are federally enforceable. Upon authorization, the State's hazardous waste management rules that

are either equivalent to or more stringent than the corresponding federal rules will apply in lieu of the federal rules. State hazardous waste requirements that are broader in scope than the federal program will not be part of the authorized program and are not federally enforceable. The applicable authorized rules are identified in the chart below. In the discussion below, we also identify the state hazardous waste requirements that are more stringent or broader in scope.

| Federal hazardous waste requirements                                | Analogous state authority                                                                                                                                                |
|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 40 CFR parts 260–266, 268, 270, 273, and 279, through May 25, 1998. | Hawaii Administrative Rules (HAR) 11–260 to 11–266, 11–268, and 11–270, adopted June 18, 1994, revised March 13, 1999; and HAR 11–273 and 11–279 adopted March 13, 1999. |

#### Federal Provisions That Are Not Included in This Authorization

Hawaii did not adopt certain rulemaking petition procedures from 40 CFR part 260, subpart C, i.e., 40 CFR 260.20, 260.21, 260.22, 260.30, 260.31, 260.32 and 260.33, which address what to include in

- Petitions requesting modifications under 40 CFR parts 260 through 266, 268 and 273, and
- Petitions concerning equivalent testing methods, waste exclusion, recycled materials and devices classified as boilers.

Adoption of these rulemaking petition procedures is not required for RCRA authorization. EPA will continue to implement those requirements. Although Hawaii did not adopt these procedures, Hawaii did adopt some similar procedures which are discussed below with other more stringent requirements.

Where EPA grants a petitioner an exclusion from federally-issued standards under these procedures, it is advisable that the petitioner contact the State regulatory authority to determine the current status of its waste under State law. It is important for petitioners to contact Hawaii because States are free to impose requirements that are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)).

#### More Stringent Authorized State Hazardous Waste Requirements

Authorized State hazardous waste requirements are either equivalent to or more stringent than the corresponding

federal requirements. The Hawaii hazardous waste requirements authorized with today's action include state requirements that are more stringent than the corresponding federal requirements.

Hawaii's program is more stringent in the manner in which it addresses federally approved variances and exclusions. Hawaii's hazardous waste management program includes procedures by which a petitioner may seek an exclusion or variance under State law where EPA has previously approved an exclusion or variance under RCRA. Where EPA has excluded a waste from regulation under 40 CFR 260.22, the exclusion will only be effective under Hawaii law if Hawaii adopts the exclusion by rule, pursuant to HAR 11–260–42. Similarly, under HAR 11–268–51, any extension, variance or alternative treatment approval granted by EPA under 40 CFR 268.5, 268.6 and 268.44 will not be effective in the state unless Hawaii adopts it by rule. Finally, under HAR 11–264–1082(c)(4)(ii) the State must separately approve any alternative treatment method approved by EPA under 40 CFR 268.42(b). Given the additional procedures required by Hawaii, these State requirements are considered more stringent than the federal program.

Hawaii has also adopted some more stringent requirements concerning permits. Hawaii established a shorter permit term (five years instead of ten years) than the federal program, and is therefore more stringent than the federal program. Additionally, Hawaii reviews hazardous waste land disposal permits three years rather than five years after issuance, which is also more stringent than the federal program. However, there are currently no such facilities in Hawaii. Furthermore, Hawaii's provision under HAR 11–271–15(e) establishing a maximum time period of 180 days for the State's action on a permit application, will be terminated as soon as Hawaii obtains federal authorization for its hazardous waste management program pursuant to HAR 11–271–15(f).

#### Broader in Scope State Hazardous Waste Requirements

States are free to impose hazardous waste requirements that are broader in scope than the Federal hazardous waste management program. Broader in scope requirements will not be part of the authorized program.

Hawaii did not adopt 40 CFR 261.4(b)(5) and therefore does not exclude drilling fluids, produced waters, and other wastes associated with

the exploration, development, or production of crude oil, natural gas or geothermal energy from regulation as hazardous waste. With respect to the management of those wastes, the Hawaii program is therefore broader in scope than the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although you must comply with these requirements in accordance with state law, they will not be RCRA requirements under the authorized program and are not federally enforceable.

Hawaii's used oil requirements also reflect some departure from the federal program. Hawaii requires persons who transport, market or recycle used oil or used oil fuel to obtain a permit from HDOH, which requirement is broader in scope than the federal program. Hawaii also requires an annual report of transporters, processors, re-refiners and marketers, in addition to the RCRA required biennial reports, in order to allow the State to track legitimate handlers of used oil and thus better locate illegal handlers. This requirement is broader in scope than the federal program.

Hawaii adds a requirement that any person who imports hazardous waste from a foreign country or from a state into Hawaii must submit additional information in writing to the State within 30 days after the waste arrives. This requirement is broader in scope than the federal program.

#### Summary of More Stringent and Broader in Scope Requirements

In summary, EPA considers the following State requirements to be more stringent than the Federal requirements:

- HAR 11–268–51, because the State must separately approve any exclusion, variance or alternative treatment method approved by EPA under 40 CFR 268.5, 268.6, 268.42(b) and 268.44; and
- HAR 11–270–50(a) and (d), because the State limits hazardous waste permits to five years (the federal limit is 10 years), and landfill permits to three years (the federal limit is five years). These requirements are part of Hawaii's authorized program and are federally enforceable.

EPA considers that the following State requirements go beyond the scope of the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although persons must comply with these requirements in accordance with state

law, they will not be RCRA requirements under the authorized program and are not federally enforceable.

- HAR 11-261-4(b)(5), because the State treats drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy as hazardous waste, and the Federal requirements exempt them from regulation;

- HAR 11-262-60 and HAR 11-262-61, because, unlike the Federal program, the State requires that any person who imports hazardous waste from a foreign country or from any state into Hawaii must submit specified information in writing within 30 days after the waste arrives in the State;

- HAR 11-279-90 to HAR 11-279-95, because the State requires that persons who transport, market or recycle used oil or used oil fuel obtain a State permit and the Federal program has no such permitting requirement; and

- HAR 11-279-48, 57 and HAR 11-279-76, because the State requires annual reports of used oil transporters, processors, re-refiners, and marketers, in addition to the biennial reports required by RCRA.

#### **G. How Will the State Enforce Compliance With the Rules?**

Section 3006(b) of RCRA requires that the State provide adequate enforcement of compliance with the hazardous waste management requirements in order to receive authorization. We have determined that Hawaii can adequately enforce compliance with its hazardous waste management regulations. Hawaii's enforcement authorities include the power to issue, modify, suspend or revoke permits; collect information and enter and inspect the premises of persons who handle hazardous wastes; assess administrative penalties or initiate action in court for penalties or injunctive relief; issue abatement and corrective action orders; and pursue criminal violations. Hawaii's enforcement provisions are located at Hawaii Revised Statute (HRS) Chapter 342J (1993 and Supp. 1998).

#### **H. Who Handles Permits After This Authorization Takes Effect?**

Hawaii will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will transfer the administration of any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization to Hawaii. In the Notice of Tentative Determination,

EPA said that it would continue to administer any RCRA hazardous waste permits or portions of permits issued by EPA prior to the effective date of this authorization. However, under the Memorandum of Agreement with Hawaii, EPA and HDOH have agreed that HDOH will administer the permits or portions of permits issued by EPA prior to authorization. EPA will not issue any new permits or new portions of permits for the authorized provisions after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Hawaii is not yet authorized.

#### **I. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Hawaii?**

There are no Federally-recognized Indian lands in Hawaii.

#### **J. What Is Codification and Is EPA Codifying Hawaii's Hazardous Waste Management Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. We are reserving the amendment of 40 CFR part 272, subpart M, for codification of Hawaii's program at a later date.

#### **K. Administrative Requirements**

The Office of Management and Budget has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, a decision to authorize Hawaii for these revisions is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This authorization will effectively suspend the applicability of certain Federal regulations in favor of Hawaii's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. Authorization will not impose any new burdens on small entities. Accordingly, I certify that authorization for these revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes

pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibility between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in

accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. This action will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 13, 2001.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 26, 2001.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 01-27465 Filed 10-31-01; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 207, 252, 253, and Appendix G to Chapter 2

#### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, reference numbers, and terminology.

**EFFECTIVE DATE:** November 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

#### List of Subjects in 48 CFR Parts 204, 207, 252, and 253

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 204, 207, 252, 253, and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 204, 207, 252, 253, and Appendix G to subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 204—ADMINISTRATIVE MATTERS

##### 204.7303 [Amended]

2. Section 204.7303 is amended in paragraph (a)(2), in the last sentence, by removing <http://www.ccr2000.com> and adding in its place <http://www.ccr.gov>.

#### PART 207—ACQUISITION PLANNING

##### 207.471 [Amended]

3. Section 207.471 is amended in paragraph (b), in the last sentence, by removing "070308" and adding in its place "070207".

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.204-7004 [Amended]

4. Section 252.204-7004 is amended as follows:

a. By revising the clause date to read "(NOV 2001)"; and

b. In paragraph (d) by removing <http://www.ccr2000.com> and adding in its place <http://www.ccr.gov>.

##### 252.204-7005 [Amended]

5. Section 252.204-7005 is amended as follows:

a. By revising the clause date to read "(NOV 2001)"; and

b. In paragraph (a), in the first sentence, by removing "Special" the second time it appears and adding in its place "Sensitive".

## PART 253—FORMS

### 253.204-70 [Amended]

6. Section 253.204-70 is amended in paragraph (e)(4), in the third sentence, by removing "http" and adding in its place "https".

#### Appendix G—Activity Address Numbers

7. Appendix G to Chapter 2 is amended in Part 3 as follows:

a. In the entry "N00189" by adding, after "H3", ", J3"; and

b. By adding, in alpha-numerical order, five new entries to read as follows:

#### Part 3—Navy Activity Address Numbers

\* \* \* \* \*

N49400, 3G Officer-in-Charge, Naval Regional Contracting Center, Detachment Bahrain, PSC 451, Box NRCC, FPO AE 09834-2800

N49420, 3R Officer-in-Charge, Naval Regional Contracting Center, Detachment Dubai, PSC 451, Box 531, FPO AE 09834-2800

\* \* \* \* \*

N63273, 4S Commanding Officer, Combat Direction Systems Activity, Dahlgren Division, Naval Surface Warfare Center, 1922 Regulus Avenue, Virginia Beach, VA 23461-2097

\* \* \* \* \*

N68558, 3H Officer-in-Charge, Naval Regional Contracting Center, Detachment London, PSC 821, Box 45, FPO AE 09421-1300

\* \* \* \* \*

N69250, NSF Director, SPAWAR Information Technology Center, 2251 Lakeshore Drive, New Orleans, LA 70145-0001

\* \* \* \* \*

[FR Doc. 01-27369 Filed 10-31-01; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 212 and 252

[DFARS Case 95-D712]

#### Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to the acquisition of commercial items. The rule updates the